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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,469	10/12/2004	Frances Sault	029370.00005	4694

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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
11/27/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com
IPMatters@arentfox.com
Patent_Mail@arentfox.com

Office Action Summary	Application No.	Applicant(s)	
	10/501,469	SAULT ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *12 and 20* is/are allowed.

6)☒ Claim(s) *1-11, 13-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6-10 are rejected under 35 U.S.C. 102(a) as being anticipated by Gambino, US 2002/0039612A1.

Gambino discloses a fruit filling as in claim 1, 3, that contains fruit puree and wheat gluten and additional ingredients such as water, citric acid, and calcium citrate (see page 3, 0023, 0028, 0035, 0036). Gambino discloses that the filling comprises crushed fruit, pectin and a sugar as in claim 2, wherein the sugar can be sucrose or fructose as in claim 4 (page 3, 0023, 0029 and 0022). Gambino discloses that the fruit can be apple as in claim 6 (page 2, 0020). Gambino discloses that the gluten is present in the filling form 0-10% as in claims 8-10 (page 3, Table 1, and 0036). Gambino discloses as in claim 7 that water is present from 0-40%, sugar from 35-80%, fruit from 0.5-50%, pectin form 0-4%, citric acid form 0-2%, salt from 0-2%, salt from 0-2% and calcium citrate from 0-5% (page 3, Table 1). Gambino does not disclose that sodium citrate or

phosphate is used, meeting the instantly claimed limitation of 0% of each of these ingredients.

Nothing is seen as in claim 1 that the fruit mixture would not retain its from since the composition is the same.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gambino as applied to claims 1-4, 6-10 and further in view of Yamaguchi, (6,251,651).

Gambino discloses all of the features of the instantly claimed invention except for the use of deamidated wheat gluten as in claims 5 and 11. Yamaguchi taught that deamidated wheat gluten is more suitable for use in food products than non-deamidated wheat gluten (col. 11, lines 36-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a deamidated wheat gluten as taught by Yamaguchi in the invention as disclosed by Gambino since both are directed to using wheat gluten in food applications and since Yamaguchi taught that deamidated wheat gluten is more soluble and dispersible as well as being more pH stable, especially more useful in foods with acidic pH's (col. 11, lines 36-48).

Claims 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Bar Talk" by Lisa Kobs (Kobs) in view of Gambino.

Kobs disclosed a bar with a confectionery layer and a fruit filling. Kobs disclosed different types or variations of bars and disclosed options for bars including: wherein said confectionery layer can include peanut flour or a high protein dough, enrobing the bar with chocolate, that the bar can be a nutritional bar, and wherein the bar has vitamins and minerals added to it. Kobs does not disclose that the fruit filling comprises fruit puree and wheat gluten. Gambino discloses a fruit filling that comprises fruit puree and wheat gluten (page 3, 0023,0028, 0035 and 0036). It would have been obvious to one of ordinary skill in the art to use the fruit filling of Gambino in the bar of Kobs. Kobs provides for the use of a fruit filling in producing a food bar. As the teachings of Kobs do not specifically provide a fruit filling for using in the bar described therein, the

ordinary skilled artisan would have necessarily referred to teachings of known fruit fillings in the art in use in the bar of Kobs, such as the fruit fillings of Gambino. Gambino specifically provides a fruit filling usable in confections and bar-like food products, and thus it would not have involved an inventive step for one of ordinary skill in the art to have utilized this fruit filling in a food bar, as instantly claimed.

ARGUMENTS

The arguments filed 10-26-07 have been considered but they are not considered persuasive. Applicants argue that Gambino shows the composition as isolated ingredients. However, the claimed ingredients are disclosed in Table 1. Also, the composition of Gambino can contain 50% of a fruit source, sweeteners sugar (0023, 0022). The wheat gluten can be chosen from various types of protein (0036). Since they are used in the same grouping they are assumed to be used interchangeably. All the claimed ingredients have been disclosed. Applicants have not limited the claims by the phrase "consisting of", therefore, other ingredients can be in the composition.

No amounts of ingredients are required in claims 1-6. Therefore, it is seen that 102 rejection was appropriate. It is not seen that the cited ingredients are taken from a laundry list of food ingredients, but from food groupings as above. For instance, the gluten is taken from a group of other proteins which perform the same function.

Nothing is seen that the filling of Gambino would not retain its shape as this is a matter of using known ingredients for their known function. Gambino

can use from zero to 40% water, the amount which certainly would control the viscosity of the composition.

As to Yamacuchi and Kobs they are used to show that deaminated wheat gluten is known in food applications and that food bars are known. The claims do not say anything about 'stand up" properties, but even so, whether a composition stands on its own is determined by the composition and viscosity of the composion, which is within the skill of the ordinary worker to vary.

RELATED CASE

Application 10/345,252 is a duplicate of the instant case which was abandoned. It is not clear whether applicant wants priority to this case, as no continuation papers have been found. No reply has been made as this question.

Allowable Subject Matter

Claims 12 and 20 are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 11-20-07

H. Pratt

HELEN PRATT
PRIMARY EXAMINER